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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,023	07/31/2003	Scott Allen Fyfe	P03-SFYFE-0030	7918
34744	7590	11/12/2004	EXAMINER	
THE LAW OFFICE OF RICHARD S ERBE P.O. BOX 418 5380 SENECA PLACE SIMI VALLEY, CA 93062			GORMAN, DARREN W	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,023

Applicant(s)

FYFE, SCOTT ALLEN

Examiner

Darren W Gorman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/31/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The IDS filed on 31 July 2003 is hereby acknowledged and has been placed of record.

Please find attached a signed and initialed copy of the PTO 1449.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference number “62” is not described in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “communication between said

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sprayer and said container” as affected by the “conduit”, as recited in claims 1 and 13, must be shown or the feature canceled from the claims. Figure 3 currently shows only a portion of tube (26) in the container. It cannot be determined in the drawings how far communication of the tube (26) goes within the sprayer.

Further, the “nozzle support connected to said transition, through which passes said conduit”, as recited in claims 3, 6, and 14, must be shown or the feature canceled from the claim(s). A “nozzle support structure (118)” is shown in Prior Art Figure 1, however the Figures (Figures 2 and 3) that represent the exemplary apparatus according to the present invention do not show a “nozzle support” connected to the transition element (18) as recited.

Further, the apparatus as seen in the Figures does not show the “conduit” passing through the “nozzle” as specifically recited in claims 3, 6, and 14. This feature must be shown or the feature canceled from the claims.

Further, it cannot clearly be determined that the orifice (32) in the Figures is “adjustable” as claims 3, 6, and 14 recite. This feature must be shown or the feature canceled from the claims.

Further, “wherein said generally cylindrically shaped tube includes an enlarged section along a portion of its length” as recited in claims 4, 7, and 15, is not shown in the drawings. This feature must be shown or the feature canceled from the claims.

Further, the “adjustable outlet” as recited in claims 17 and 18 is not shown. Does this recitation refer to the orifice (32) of the nozzle (30)? If so, as explained above with regard to the recitation of the “adjustable” orifice, it cannot clearly be determined that the orifice (32) in the Figures is “adjustable”. This feature must be shown or the feature canceled from the claims.

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Further, the “delivery tube conducting said material from said container to said outlet”, as recited in claims 17 and 18, must be shown or the feature canceled from the claims.

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 3, 4, 6, 7, 11, 14, and 15 are objected to because of the following informalities:

Regarding claims 3, 6, and 14, Applicant recites that the first terminus is exterior to the tube, while the second terminus is located within the tube. However, each of the above claims then recites that a handle is on the second terminus (i.e. within the tube), and a seal is located on

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the first terminus (i.e. outside the tube). As disclosed in the specification and shown in the drawings, the handle (16) is located outside the tube, while the seal (38) is located within the tube.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the instant case, the disclosure is lacking any detail regarding control of air between the “air volume chamber (34)” and the “air cylinder (12)”. The disclosure is further lacking detail regarding the control of air between these two cylinders and the container.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Mitchell, Brown, Chapin et al., Janke, and Amundsen are cited as of interest.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W Gorman whose telephone number is 703-306-4205. The examiner can normally be reached on M-F 7:30-5:00. The examiner may be reached at the above telephone number until November 23, 2004 and may be reached at (571) 272-4901 after November 23, 2004.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 703-308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Darren W Gorman
Examiner
Art Unit 3752

DWG 11/8/04
DWG
November 8, 2004


David A. Scherbel
Supervisory Patent Examiner
Group 3700